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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91120453
Party	Defendant CHARLES BROWNING WILSON CHARLES BROWNING WILSON ,
Correspondence Address	Robert Steckman The Law office of Robert Steckman 111 John Street, Suite 800 New York, NY 60606 UNITED STATES
Submission	Testimony For Defendant
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Signature	/Robert Steckman/
Date	04/05/2007
Attachments	Applicant Declaration 91120453.pdf (9 pages)(776151 bytes)

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIALS AND APPEALS BOARD

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HEARST COMMUNICATIONS, INC. and : Opposition No. 91120453
HEARST MAGAZINES PROPERTY, INC. :
 : **APPLICANT'S DECLARATION**
Opposers, :
 :
v. :
 :
CHARLES BROWNING WILSON :
 :
Applicant :
-----X

1. Charles "Cosmo" Browning Wilson ("Cosmo"), hereby states that he is the Applicant in the above-entitled proceeding, and makes this declaration based upon his personal knowledge and upon documents maintained in his ordinary course of business by him and by Cosmo.com, Inc.

Cosmo's Background

2. Since in or about 1979 I have worked professionally as a technician in the entertainment industry on numerous domestic and international music, theater and other live performance tours. My most common task has been employment as a Lighting Designer or Lighting Director for some of the largest rock and roll tours of the last 20 years, including, but not limited to AC/DC, The Rolling Stones, Black Sabbath, Genesis and Motley Crue. A partial list of the many of the concert tours that I have worked on during my career from 1979 to 2002, published at www.avolites.org.uk/gallery/avo-designers/cosmo-wilson.htm, appears as Exhibit "A" to Applicant's Notice of Reliance.
3. I have been known in my profession as "Cosmo" since in or about 1984 when I was working on the Miss USA Pageant, and the head carpenter , whose first name was "Joe" (I do not

recall his last name) started calling me “Cosmo” as a nickname. Later, in or about 1986, I was working on the Genesis “Invisible Touch” world tour, there was another “Charles” on the crew, specifically Mr. Charles Boxhall. Since I was the younger “Charles” in the crew, I was asked to pick another name to identify myself amongst the crew members in order to avoid communication problems. Recalling my experience with Joe from the Miss USA Pageant in 1984, I requested that members of the crew refer to me as Cosmo. I have been commonly identified as Cosmo throughout the concert tour industry ever since 1986.

4. There are numerous documents which clearly demonstrate that I have been known as Cosmo in my industry for many years before I purchased the uniform resource locator, <http://cosmo.com>, which include, but are limited to (i) my Wikipedia entry, which appears as Exhibit “B” to Applicant’s Notice of Reliance; (ii) my Internet Movie Database (“IMDB”) entry which appears as Exhibit “C” to Applicant’s Notice of Reliance; (iii) the January/February, 1994 issue of “Lighting Dimensions” magazine which appears as Exhibit “D” to Applicant’s Notice of Reliance; (iv) the May, 1996 issue of “Lighting Dimensions” magazine the which appears as Exhibit “E” to Applicant’s Notice of Reliance; (v) the June, 1996 issue of “Lighting Dimensions” magazine which appears as Exhibit “F” to Applicant’s Notice of Reliance; (vi) an excerpt from the autobiography of Mr. David Lee Roth, copyright 1997, Hyperion Publishing which appears as Exhibit “G” to Applicant’s Notice of Reliance; (vii) an article from the March 1, 1999 issue of “Live Design: magazine discussing my work on the 1998 Motley Crue tour which appears as Exhibit “H” to Applicant’s Notice of Reliance; and (viii) excerpts from www.holesinthedark.com, a lighting designer’s industry website, regarding my work on the 1991 Rolling Stones Steel Wheels Tour and IMAX movie as well as my work on the 1992 Freddy Mercury tribute concert at Wembley Arena, London,

United Kingdom, which appears as Exhibit “I” to Applicant’s Notice of Reliance.

5. It is interesting to note that in the Opposers’ Responses and Objections to Applicant’s written Cross-Examination, the Opposers response to Applicant’s first question states in the very first sentence: “[I]ndeed, the current definition of “Cosmopolitan” found in the on-line encyclopedia Wikipedia refers to “Cosmo Magazine.” as conclusive proof that the phrase “Cosmo” identifies Opposers.
6. In fact, review of the Wikipedia definition of “Cosmo” (rather than Cosmopolitan) demonstrates that the Wikipedia definition for “Cosmo” refers to both Cosmopolitan Magazine and to me, Cosmo Wilson, individually. See Exhibit “J” to Applicant’s Notice of Reliance.

Cosmo Purchases Cosmo.com

7. In or about 1997, I contacted an entity referred to as “The Domain Dealer a/k/a DD King” regarding the possible purchase of the cosmo.com domain. I had been interested in the domain after learning that it was available for purchase. I was advised by a representative of “DD King” that they had attempted to negotiate sale of the cosmo.com domain with Opposers, but that such efforts had been unsuccessful. I was also aware that the domain had been available to the general public for registration prior to “DD King’s” ownership of same. In or about December 1997, I entered into negotiations with “DD King” for the purchase and transfer of the cosmo.com domain.
8. Attached as Exhibit “K” to Applicant’s Notice of Reliance is an article entitled “Daily Double Scoop” article, dated November 25, 1996, indicating that the Opposers in this proceeding failed to register the cosmo.com domain and further demonstrating that Opposers had knowledge of “The Domain dealer a/k/a DD King’s” ownership of this domain since at

least 1996, and that Opposers did not undertake any significant efforts to secure the cosmo.com domain for their own use.

9. On January 8, 1998 I entered into a written agreement to purchase the cosmo.com domain from "DD King". A copy of such agreement is attached as Exhibit "L" to Applicant's Notice of Reliance.
10. I did not receive any contact of any nature from Opposers from the time I purchased cosmo.com in January 1998 until September 2000, when my herein trademark application was published for opposition.

Applicant's Use of the "Cosmo" mark is entirely distinguishable from Opposers' use

11. At all relevant times herein, I have always used cosmo.com as a personal website to discuss my travels, tours and to provide information about entertainment and recreational options in the many cities I have visited in the course of my career. A copy of a sample of my "Tour Diary" from cosmo.com is attached as Exhibit "M" to Applicant's Notice of Reliance.
12. At no time have I ever posted anything on my website that implies that I am affiliated in any manner with Opposers or their publications, nor have I utilized my website to provided any information commonly addressed in Opposers' publications, such as fashion, cosmetics, sexuality or relationships.
13. Indeed, it would be very easy for me to include sections which relate to the "Rock and Roll" lifestyle, including fashion, sexuality and other similar subjects which are the lifeblood of Opposers' publication. However, I have made every effort to limit my use of the domain to those areas of interest which are most suitable to my personality and experience.
14. Upon information and belief, since in or about 1998, I have invested approximately Two Hundred Thousand and 00/100 (\$200,00.00) Dollars in developing, promoting and

maintaining the cosmo.com website. These sums are mostly comprised of server fees, web developer fees, legal and accounting fees and general advertising and promotion.

Opposers do not have a single U.S Trademark registration for “COSMO”

15. Although Opposers own multiple registrations for various uses of “COSMOPOLITAN”, Opposers do not have a single active registered trademark for the phrase “Cosmo”. Notably, twelve of the fourteen USPTO registrations of “COSMO” by Opposers are listed as “DEAD” and the only two which are listed as “LIVE” were recently filed in March, 2007 and have not yet been assigned to an examining attorney. See print out from USPTO “TESS” database attached as Exhibit “M” to Applicant’s Notice of Reliance.
16. It is also notable that in Opposers Notice of Opposition, Opposers claim that my application infringes upon U.S Trademark Registration No. 1843656, however, it is apparent from review of the PTO’s “TESS” database that this trademark was canceled on July 13, 2001 for failure to file a Section 8 renewal affidavit. It is also notable that in answer to questions 7 and 8 of Opposers’ Responses and Objections to Applicant’s Written Cross-Examination (previously filed in this proceeding), Opposers admit that they cannot demonstrate any use of “Cosmo” pursuant to U.S Trademark Registration No. 1843656, nor can Opposers identify why such registration was abandoned.
17. Moreover, it is apparent that Opposers have not undertaken any efforts during the seven (7) years since this proceeding was instituted to renew U.S Trademark Registration No. 1843656, nor have they commenced any action against me for trademark infringement nor have they filed any ICANN proceeding to attempt to gain possession of the cosmo.com domain.
18. It is further notable that the Examining attorney in my application did not find a likelihood

of confusion with any of Opposers' active trademarks during the registration process, and as a result, the Examining Attorney approved my trademark for publication on the principal register.

Opposers have failed to establish common law rights to the phrase "COSMO"

19. Upon information and belief, there are many other people and other companies who have used "Cosmo" as their trademark (See e.g. U.S. Trademark Registration No.s 2544167, 3035236, 3035237, 2576084, 2305218, 2169138, 2179422, 2557509, 1045202, 1459105, 1696750, 1977306 and 3035237).
20. Upon information and belief, it is admitted that Opposers sell a lot of copies of "COSMOPOLITAN" and "COSMO GIRL" magazines to young women seeking the latest fashion information, however, it is also indisputable that Opposers have failed to undertake the necessary efforts to ensure that their trademark registrations are properly renewed, or to file registrations with the Patent and Trademark office seeking trademark rights for same.
21. It is also notable that in the "First Declaration of Stephen Rodgers", dated May 17, 2006 and submitted by Opposers in this matter as direct trial testimony, the Opposers sole proof of the general public's knowledge of the phrase "COSMO" are the self-serving statements of Opposers' own Vice-President. In fact the statements made in the "First Declaration of Stephen Rodgers" is not supported by either: (i) a customer survey demonstrating any association of the phrase "Cosmo" with Opposers by the general public and/or any proof of the 'famousness' of their purported common law trademark; or (ii) any communications from Opposers' customers indicating that they were misled and/or confused by my cosmo.com website. In fact, the only evidence submitted in support of Opposers' claims are references made by Opposers themselves in their own magazines (See "First Declaration of

Stephen Rodgers” ¶¶ 5-7).

22. Given the size of Opposers’ corporation and the their multi-million dollar annual marketing budget, it is difficult to understand why Opposers have not taken a more active approach in maintaining their trademark registrations.
23. Opposers appear to assert that they should be the sole users of the phrase “COSMO” in all International Classes throughout the world (irrespective of their lack of evidentiary proof), however, it is apparent that there are many users of the phrase “COSMO” (see ¶19, above).
24. Upon information and belief, Opposers are therefore unable to demonstrate a clear likelihood of confusion between their “COSMOPOLITAN” magazine and my cosmo.com website.
25. I have owned the cosmo.com domain and have been actively using such phrase in commerce for nearly ten years. As a result, it is requested that the Opposers opposition to my trademark application be denied.

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The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, declares that the facts set forth in this declaration are true; all statements made of his own knowledge are true; and that all statements made on information and belief are believed to be true.


CHARLES "COSMO" BROWNING WILSON
Dated: 9/1/07

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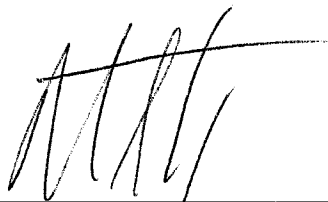
Opposition No. 91120453

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the within document entitled Applicant's Testimony was served upon counsel for Opposers on April 5, 2007, by first class mail, postage prepaid, at the address set forth below:

Ted Davis
Kilpatrick Stockton, LLP
Attorneys for Opposers
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309-4530

Dated: New York, New York
April 5, 2007



Robert M. Steckman